



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 2415-23
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of his naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 May 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your Failure of Selection (FOS) to the rank of Rear Admiral/O-7. The Board also considered your request to be reconsider for promotion by a Special Selection Board (SSB). The Board considered your claim that █ failed to contact your daughter to confirm that you had been free of alcohol consumption for many years.

Regarding your request to remove your FOS, the Board noted you provided no evidence to support your request. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Thus, the Board determined that

there was insufficient evidence in your record to change the selection board decision or to remove your FOS to Rear Admiral/O-7.

The Board also considered whether an SSB is warranted. The Board noted that pursuant to SECNAVINST 1402.1B, it limits the approval of an SSB request as authorized under Sections 628 and 14502 of Title 10 U.S.C. in cases where the promotion selection board is convened on or after 1 October 1996. Thus, the Board determined that your request does not meet the established criteria to conduct an SSB. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting a SSB.

Finally, pursuant to an Under Secretary of Defense for Personnel and Readiness memorandum dated 10 February 2015, the Board does not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or Secretary of Defense (SECDEF). Since there is no evidence you were appointed by the President or SECDEF to the paygrade of O-7, the Board has no authority to promote you. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

While the Board was unable to grant you the relief you sought, it appreciates your Honorable and selfless service to this country.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require that you complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/12/2023

